NEBRASKA DDD/MLTC WAIVER WORKGROUP: HEALTH AND SAFETY
JUNE 9, 2016

Participants: Scott Hartz; Michelle Waller; Darla Ramsey; Ellen Mohling; Deb Rupe, DSN; Mary Conaway; Donna Nickel, NorthStar; Lori Harder; Sue Spitser
Notes Recorder: Mary Conaway
Next Meeting (date/time): July 7, 2016

Agenda: Go over comments from CMS

Topic	Person Responsible	Discussion	Action Item
Appendix G: Participant Safeguards			
Appendix G-1: Response to Critical Events or Incidents			
b. State Critical Event or Incident Reporting Requirements.	Scott Hartz & Group	Specify the types of critical events or incidents (including alleged abuse, neglect and exploitation) that the State requires to be reported for review and follow-up action by an appropriate authority, the individuals and/or entities that are required to report such events and incidents and the timelines for reporting. State laws, regulations, and policies that are referenced are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).	
	Scott Hartz & Group	DDD defines incidents as allegations or occurrences of abuse, neglect, and exploitation; events that cause harm to an individual; and events that serve as indicators of risk to participant health and welfare	**CMS:** Please define all entities prior to use of acronyms. Is there a definition of neglect applied –abuse and exploitation are defined, but not neglect. Meeting Discussion: We've laid out what neglect & abuse are.
	Scott Hartz & Group	Any reason to believe that abuse and neglect has occurred is reportable under Nebraska state statutes to DHHS Protective Services or law enforcement. Reports can be taken by DHHS at a toll free abuse and neglect hotline that is available 24/7 and posted on the DHHS website. Reports are also accepted by e-mail, FAX, letter or face-to-face at any DHHS office. Nebraska state statue mandates the following entities to report: "any physician, psychologist, physician assistant, nurse, nursing assistant, other medical, developmental disability, or mental health professional, law	**CMS:** Should this be abuse and/or neglect? Abuse and neglect are not grouped together above and below (highlighted) it is abuse and/or neglect. Is there a statute of limitation on reporting or investigating incidents in this state? Please include the state statute references

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		enforcement personnel, caregiver or employee of a caregiver, operator or employee of a sheltered workshop, owner, operator, or employee of any facility licensed by the Department of Health and Human Services Division of Public Health (DPH), or human services professional or paraprofessional not including a member of the clergy."	Meeting Discussion: Regulations were rewritten to the same as APS/CPS. Adult and Children regulations are different. We do follow APS regulations
	Scott Hartz & Group	In addition, under state policies, a report must be submitted to DDD staff immediately upon the provider becoming aware of the abuse and neglect and using the Department approved web-based electronic records system, within 24 hours (with some exceptions noted below) of determining reason to believe that abuse and/or neglect has occurred. At a minimum, the following incidents must be reported within 24 hours of the provider becoming aware of the incident :	**CMS:** And/or? Is this a reference to those which require an immediate notification? Didn't see any that could be longer than 24 hrs listed below. If so could add "with some exceptions which require immediate notification as noted below". "Individual" and "individuals in services" "persons served" are all used below and sometimes omitted altogether when describing these incidents involving a client. For clarity, could you use a consistent term throughout? Sometimes the incident involves staff and sometimes not, and sometimes it is not specified who is involved, so it is not clear if it is only the client, or could also be a staff member. Meeting Discussion: The Providers contact the Abuse Neglect Hotline within 24 hours; other monitoring is submitted later than 24 hours.
	Scott Hartz & Group	Use of an Emergency Room, or an urgent care facility for treatment or admission, regardless of type of injury.	**CMS:** Would you want to include "incident, or illness" or is this limited to only physical injury. Meeting Discussion: Expand on definition.
	Scott Hartz & Group	PRN psychotropic medication use. Property damage caused by individual. Seizure that last over five minutes or over the timeframe set by the individual's physician, or which requires treatment at an ER or hospital .	**CMS:** Administration of psychotropic medication under a PRN order may be a better way to phrase this may be a better way to phrase this. What about urgent care? Meeting Discussion: Therap currently has no category to pick for this topic. Michelle, RN, we omit these, there is no way to track it currently.

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	Scott Hartz & Group	Should DDD have significant concerns about any provider's performance in managing critical events or incidents, the Department reserves the right to request from any provider an aggregate report of incidents that may include, but not be limited to, a compilation, analysis, and interpretation of data, and evidentiary examples to evaluate performance; and which demonstrate a reduction in the number of incidents over time.	**CMS:** Would "express" be better? – assuming you are referring to the summary reports submitted to the department above? Isn't DDD within the Department? So who from the Department would be requesting these reports specifically? Should this be an ongoing aggregate report? Seems like it must be ongoing in order to show a reduction over time. Do you mean in order for the Department to evaluate, or did you intend that the provider themselves does the evaluating of all incidents that have occurred over a specific period of time, and they must demonstrate that the number of incidences have decreased over time, not increased? Meeting Discussion: no notes on this.
c. Participant Training and Education.	Scott Hartz & Group	Describe how training and/or information is provided to participants (and/or families or legal representatives, as appropriate) concerning protections from abuse, neglect, and exploitation, including how participants (and/or families or legal representatives, as appropriate) can notify appropriate authorities or entities when the participant may have experienced abuse, neglect or exploitation.	
	Scott Hartz & Group	Service Coordination must review and provide a copy of the individual rights and the appeal process at the intake meeting and annually thereafter. As applicable, these materials are translated and provided in Spanish.	**CMS:** What about other languages if needed? Must follow LEP guidelines. Meeting Discussion: We use an interpreter for as needed; Google Interpreter; NFocus.
d. Responsibility for Review of and Response to Critical Events or Incidents.	Scott Hartz & Group	Specify the entity (or entities) that receives reports of critical events or incidents specified in item G-1-a, the methods that are employed to evaluate such reports, and the processes and time-frames for responding to critical events or incidents, including conducting investigations.	
	Scott Hartz & Group	Upon receipt of a report, the geographically assigned DDD Service Coordinator Supervisor reviews it to determine the appropriate response, which depends upon the type and frequency of the incident. When providers report alleged abuse and neglect of adults that is not required to be reported by law, the Protection and Safety	**CMS:** What methods are employed to evaluate the reports to determine if follow-up action is required? Are there any guidelines regarding type and frequency which could be specified?

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		staff share this information with DDD within 24 hours of receipt. The DDD geographically assigned DDD Service Coordinator Supervisor reviews it with the assigned service coordinator to determine if the participant is safe, and completes an emergency safety plan as needed.	Meeting Discussion: A better description is needed. The care giver would need suspended until investigation is completed. A concern that perpetrator could be expunged and removed from their record and could get a job again.
	Scott Hartz & Group	Timeframes for conducting, completing, and informing the participant of the results of an investigation completed internally by the DD provider are determined by the DD provider agency and are outlined in the DD provider's policies and procedures. Timeframes for state staff are established within the program, following statutory and regulatory mandates when required. Timeframes vary depending upon the involvement of law enforcement and the nature of the critical event.	**CMS:** Are any guidelines given for providers or is this at their complete discretion? Where can these timeframes be located? Are they those listed below? Meeting Discussion: ICF facility (5 days); Initial report; Preliminary Report and then after Law Enforcement reviews a Final Report.
	Scott Hartz & Group	Investigations of allegations of neglect and abuse are performed by adult protective services (APS) staff in the Division of Children and Family Services and are categorized in three priorities.	**CMS:** Are each of the types of critical incidents listed in G-1-a included in the Priority 1, 2, and 3. Is it spelled out somewhere? Does the APS worker continue to attempt contact simultaneously or does this halt the APS investigation until the law enforcement contact/summary is received? Meeting Discussion: APS/CPS will accept or not accept then if accepted Law Enforcement is contacted.
	Scott Hartz & Group	A Priority 3 reports alleges harm to a vulnerable adult which is serious, but not serious enough to be considered Priority 1 or 2 and has 60 days in which to complete an investigation. Face-to-face contact by an APS worker or law enforcement must be made with the victim within 10 calendar days of the date of the report was accepted for investigation.	**CMS:** Under what circumstances can a priority 2 or 3 report not be accepted for investigation. Do the timeframes for completion only apply if accepted? How many days may they take to determine if they will accept an allegation? Meeting Discussion: Ask APS/CPS about timelines. They aren't prioritized unless they are accepted.
	Scott Hartz & Group	The State's regulations identify the relevant parties that may request the results of the investigation and these regulations are on the public website. There is no specified timeframe for release of the information after the completion of an investigation regardless of	**CMS:** Please include the citations or specify where on the website these are located. Is this at the onset of the investigation or at the conclusion? If the participant

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		priority as release of said information is done only upon request. The participant or their representative are informed of the release of information contained in the registry upon request at the time of the investigation by the investigator. There is no mandate nor formal timeline for releasing information to the participant or their representative as this is only done upon their request.	does not have computer/internet access what other means of requesting release of information are in place? Meeting Discussion: At the conclusion of the investigation ask APS/CPS to keep us in the loop and follow up with them if needed.
e. Responsibility for Oversight of Critical Incidents and Events.	Scott Hartz & Group	Identify the State agency (or agencies) responsible for overseeing the reporting of and response to critical incidents or events that affect waiver participants, how this oversight is conducted, and how frequently.	
	Scott Hartz & Group	The Division of Developmental Disabilities within DHHS, the State Medicaid agency, is responsible for overseeing the reporting of, and response to, critical incidents and events. All critical events are entered into a web-based electronic records system and are subject to DDD analysis at any time but no less frequently than quarterly. This information includes a compilation, analysis, and interpretation of data, and includes evidentiary examples to evaluate performance that are designed to result in a reduction in the number of critical incidents over time. The DD Director reserves the right to request additional review of any incident brought to her attention as a result of the oversight process. However, there may be immediate follow-up of individual events.	**CMS:** This is not clear. Evidentiary examples designed to result in a reduction in critical incidents? Can you explain? What is designed – the information, the reports, the examples? Do you mean designed to allow for the evaluation of performance? How can these examples result in a reduction in the number of critical incidents? Meeting Discussion: CMS wants us to show them that something is happening with the data that we are collecting. They want to know if some action is being taken with some of the events. How can critical incidents be reduced?
	Scott Hartz & Group	On at least an annual basis, both Protection and Safety provide to DDD information about critical incidents that involved waiver participants. Data is obtained and analyzed on waiver participants involved in Protection and Safety reports. The data includes demographical information, types of abuse/neglect reported, and the findings of investigations.	**CMS:** Both P & S and who else? Is this one entity or two? Meeting Discussion: The submitted Text needs rewritten. It's not stated well.
Appendix G-2: Safeguards Concerning Restraints and Restrictive Interventions		Specify the safeguards that the State has established concerning the use of each type of restraint (i.e., personal restraints, drugs used as restraints, mechanical restraints). State laws, regulations, and policies that are referenced are available to CMS upon request through the Medicaid agency or the operating agency (if applicable).	

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	Scott Hartz & Group	In Nebraska, restraint means any physical hold, device, or chemical substance that restricts, or is meant to restrict, the movement or normal function of a portion of the person's body, or to control the behavior of an individual. Devices used to provide support for the achievement of functional body position or proper balance, and devices used for specific medical and surgical (as distinguished from behavioral) treatment are excluded as a restraint .	**CMS:** Might be clearer to say "are not considered to be a restraint. Please explain the types of devices you would exclude as a restraint because they are used for specific medical and surgical treatment or provide examples. Meeting Discussion: CMS response should be used.
		Restraint is allowable as an immediate response to an emergency safety situation as a component of a behavioral support plan developed in response to an emergency safety situation. The safety plan is instituted in instances where the participant poses a threat to themselves, others or property and must be kept from harm.	Does this apply to all types of restraints, or is this referring to specific types? See comment above which indicates restraint is not to be reactive in (its) design. Yet it indicates here that a restraint is allowable as an immediate response to an emergency safety situation as a component of a behavioral support plan developed in response to an emergency safety situation. Can you explain how this works and how it is not reactive in design? Do you mean the restraint is allowable as an immediate response when it is planned in advance and documented in the behavioral support plan? Is the type of restraint that may be used in an emergency situation documented and agreed upon in advance? What about behaviors that were not anticipated which create an emergency safety situation? Meeting Discussion: This needs to be simplified to be more straight forward.
		Behavioral support plans must address behaviors that are obstacles to becoming more independent; that interfere with the ability to take part in habilitation; self -injurious behaviors; or behaviors that are a threat to others. The provider's policies and procedures must specify and define approved intervention procedures, and include a description of the mechanism for monitoring the use. The following components must be in place in a behavioral support plan, a safety plan, and in order to develop emergency safety interventions specific to each individual:	Please revise this paragraph and the next to tie into the heading "safeguards concerning the use of restraints." Perhaps start with a statement that says something like, "the requirement for behavioral support plans act as a safeguard in the use of restraints because each plan must detail the restraints that may be used for the individual. They also reduce the use of restraints by providing information about common behaviors for the client, etc. Meeting Discussion: Follow CMS suggestions.

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		The functional assessments must define the communicative function of the behavior for the person and what purpose the behavior serves in the person's life; A review of the person's day and residential supports and other relevant data must be incorporated in the functional assessment process;	Not all this appears to be related to the use of restraints. Meeting Discussion: Follow CMS suggestions.
		Prior written consent of the person or the legal representative must be obtained.	For what? Use of restraints? Use of a behavioral support plan? Meeting Discussion: Use better wording and clarity.
		The provider must establish a Review Committee to provide prior review and approval of all behavior support plans, including those that utilize restraints. The effectiveness of the intervention in conjunction with the behavior support plan must be monitored and reviewed.	Is this in addition to the "prior" review? Meeting Discussion: The review is ongoing. Review Committee will review and monitor the Provider support plans including how they utilize restraints.
		Direct support and other staff are informed of potential side effects, in non-technical terms, in DDD's electronic health records system so patients can monitored for early detection of side effects. Reports must be made to the physician based on this review.	Is this regarding chemical restraints? Specify. Do you mean reports of observed side effects? Who is responsible for these reports are made to the physician. Meeting Discussion: Add Specifics of the Side Effects.
		Providers must train staff prior to assuming their duties. Topics include the philosophy, organization, services, practices and goals of the agency, including the use of psychotropic medications, physical restraints, or separation for the purpose of modifying behavior; person rights; abuse and neglect; individual program planning, including individualized assessments, base lining, data collection, writing habilitation programs, selecting training materials, and reinforcement types and schedules; medication administration (must be completed prior to administration of drugs); basic first aid; CPR; respite care; recordkeeping; and on-the-job training. Employees must be trained and demonstrate competency within 180 days of hire regarding the implementation of the provision of services to persons. This training must include: implementation and development of the service plan and interdisciplinary process;	Is this must include, or may include? What about those topics listed above? Are they not required? The waiver must demonstrate the education and training requirements that provider agency personnel must meet who are involved in the administration of a restraint.

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		positive support techniques; and approved emergency safety intervention techniques.	
		Detection of unauthorized use of restraints may occur at the time of provider enrollment. One component of the enrollment process consists of a review of the provider's policies and procedures for compliance with state regulations. The provider agency is required to develop policies and procedures that govern the use of restraints and separation in emergency safety situations. The provider must have an internal quality review system and a Review Committee. When DDD program staff find policies and procedures that do not comply with regulatory requirements, such as unallowable intervention techniques, an insufficient QI system, an inadequate Review Committee, etc., the provider is contacted for additional information or correction of policies and procedures. The provider must make revisions and resubmit to DDD.	Before services are delivered by the provider?
		DDD Service Coordination monitoring may detect unauthorized use of restraints. Monitoring of 100 percent is designed to review the implementation of each person's total service plan after both the annual and semi-annual team meetings. In addition, the SC conducts ongoing unannounced monitoring, which allows for focused monitoring if issues have been raised or are noted during the time of a full monitoring.	Of cases? Clients served by a provider?
		Data from the above activities are gathered and analyzed to identify state-wide trends and patterns and support improvement strategies. Limited data is gathered during the initial provider enrollment activity.	By whom? Analyzed by who? Meeting Discussion: Data Analyzed by the Committee?
		To allow for state oversight of the Service Coordination monitoring process, the responses on the forms are entered into a web-based database. This allows for individual SCs to track issues that aren't resolved and provide aggregate information for SC Supervisors, the SC Administrator, and the DDD Central Office.	Is this looking for individual issues that have been reported on the forms that have not yet been resolved, or is this to analyze the data for ongoing, systemic issues that need to be addressed systemically? How then are such issues addressed on a system wide basis?

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			Meeting Discussion: SC Monitoring of Individual based; (forms are triggered by responses of the questions completed)?
		Quarterly, the DDD Quality Improvement Committee reviews an aggregated report compiled from the statewide database of critical Incidents and events, including restraint utilization. This also includes aggregated DDD Service Coordination monitoring reports.	What actions are taken based on such reports. Meeting Discussion: SC Monitoring.
		Medications used solely for the purpose of modifying behavior may be used only with the consent of the individual or legal representative.	Please move this statement under G.2 a.i. where it discusses medications. Meeting Discussion: Move this to a different section.
		Protocols for the use of restraints are written into state regulations and must be included in provider policies, procedures, and practices. In emergency instances where the person must be kept from imminent harm to self or other, the provider must use their reasonable and best judgment to intervene to keep the person from injuring themselves or others.	If all the information below applies to all types of restraints, not just restrictive interventions (as CMS defines them) it should all be included under G2a. And a general statement that Nebraska does not make a distinction between restrictive interventions and restraints, and all policies under G2a apply to restrictive interventions as well.
		Prior to proposing a restraint, there must be documented evidence that other less restrictive methods had been regularly applied by trained staff and failed; The restraint must be safe for the individual; and Agency-approved restraints must be specified and defined.	Who is the "Agency"? How does the provider know which restraints are agency-approved?
ii. State Oversight Responsibility.		Specify the State agency (or agencies) responsible for monitoring and overseeing the use of restrictive interventions and how this oversight is conducted and its frequency	
		Only additional information is included in this section regarding : Review and approval of each DD provider's policies and procedures during the provider enrollment process; On-site certification review activities; Review of critical incident reports; Review of reports of events;	Can "Only" be deleted? Why is this information included here, but not in the section about oversight of restraint?

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		DDD Service Coordination monitoring; and Complaint investigations.	
		Currently, reports of incident reports are reviewed daily to determine if follow-up by DDD central office is warranted, such as a complaint investigation, focused certification review, contract compliance review, or technical assistance.	Reports of incident reports? Is this a summary report? Or should "reports of" be removed?
		Separation from harmful circumstances or from individuals at risk can only be used as an emergency safety intervention when the person must be kept from imminent danger to self or others (e.g., running into traffic, leaving a moving car or other serious, unusual or life-threatening actions by the person) and must be reported immediately on the DDD electronic records system.	Separation is referred to under G.1.a., this information should be kept together. A general statement that explains the difference between separation and seclusion and which refers back to the location of the information about when separation is allowed would be better.
Appendix G-3: Medication Management and Administration			
i. Responsibility.		Specify the entity (or entities) that have ongoing responsibility for monitoring participant medication regimens, the methods for conducting monitoring, and the frequency of monitoring.	
		DD provider agencies have ongoing responsibility to ensure medications administered by the provider are monitored and are being provided in accordance with applicable state statutes and regulations (§ 71-6718 - 71-6743, 28-372, and 28-711; 172 NAC chapters 95 and 96). Medication Administration Records (MARs) are housed in DDD's electronic health record system, which all providers have access to; providers are mandated to update MARs in this system effective January 1, 2017. Compliance reviews of the provider are completed by the Division of Public Health within DHHS.	Are other methods being utilized in lieu of electronic health record system since the system is not mandatory until 1/1/2017? Please identify.
iii. Medication Error Reporting			
		Medication errors must be reported to the person responsible for providing directions and monitoring. This person could be a participant with capability and capacity to make informed decision	About medications for their medication?? This is not clear. How does someone who is capable of self-administration report to themselves?

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		about medications for their medication (i.e. self-administration), a caretaker, or a licensed health care professional. Medication errors are any violation of the "Five Rights" - providing the right medication, to the right person, at the right time, in the right dose, and by the right route, or inaccurate documentation of medication name, dose, route, and/or time administered.	Meeting Discussion: Rephrase so this is less confusing. Surveyors-…../Public Health-…..

Considerations for 2017: no comments